

ATTACHMENT #26(A)

**ATA AND CVSA COMMENTS TO FMCSA
DOCKET 10886**

(28 Pages)

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DOPT. OF TRANSPORTATION
DOCKETS

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Before the
**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION**

May 20, 2002

WASHINGTON, DC

Comments of
AMERICAN TRUCKING ASSOCIATIONS
On
**Parts and Accessories Necessary for Safe Operation; Certification
of Compliance With Federal Motor Vehicle Safety Standards
(FMVSSs)**

Docket No. FMCSA-01-10886 — 14
Federal Register [Vol. 67, No. 53]



Driving Trucking's Success

DOCKET No. FMCSA 01-10886
PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION;
CERTIFICATION OF COMPLIANCE WITH FEDERAL MOTOR VEHICLE
SAFETY STANDARDS (FMVSSs)

INTRODUCTION

The American Trucking Associations, Inc. (ATA) hereby submits the following comments in response to the Federal Motor Carrier Safety Administration's (FMCSA) Notice of Proposed Rulemaking (NPRM) published in the March 19, 2002 Federal Register (67 Fed. Reg. 12782-12787) entitled "Parts and Accessories Necessary for Safe Operation; Certification of Compliance with Federal Motor Vehicle Safety Standards (FMVSSs)."

ATA is the trade association of the American trucking industry and is vitally interested in matters affecting the nation's trucking fleet, including retention of the manufacturers' certification labels. In that capacity and for those reasons, it submits these comments on the NPRM.

SUMMARY OF COMMENTS

The membership of ATA strongly supports having safe trucks on the nation's highways. To that end we endorse FMCSA's exploration of this objective through this NPRM.

While fully supportive of truck safety, the industry seeks achieving it through reasonable and cost-effective measures. Because trucking operations and equipment are extremely diverse and accidents are neither defined by a single circumstance nor treatable with a single cure, each fleet must maintain its vehicles and train its employees in the manner that attains the greatest level of safety for its circumstances. Doing this and achieving safe operations does not hinge on whether a vehicle carries a certification label as defined by the National Highway Traffic Safety Administration (NHTSA) in FMVSS 567. FMCSA has provided no data showing that vehicles without certification labels have been operating unsafely and ATA is unaware of any such data.

Certification labels provide virtually nothing to help judge the capabilities of in-service vehicles. For example, a label indicating, in part, that the vehicle was in compliance with FMVSS 104, the windshield wiping and washing standard, when it was built, says nothing relative to the windshield wipers ability to function at any given time. We believe that fleets and inspectors should spend their time performing maintenance and

inspecting systems for proper operation rather than engaging in a "paper chase" to obtain and detect manufacturers' certification labels.

COMMENTS AND ANALYSIS

FMVSS 567 "Certification" Requirements and Concerns

Durability and Legibility. Implicit in our understanding of FMCSA's formulation of this proposal is the belief that the agency assumes that the labels required by 49 CFR 567 remain affixed and legible for the life of the vehicle¹. This is simply not so. Attachment A to these comments contains 26 photographs of missing or illegible certification labels. Photos 1 through 16 are of trailers, photos 17 through 20 are of converter dollies, and photos 21 through 26 are from trucks.

49 CFR 567.4 requires that the certification labels shall, unless riveted, be permanently affixed but does not define "permanently." Motor carriers commonly find that the labels detach long before a vehicle is retired from service. Also missing in the rule is a requirement that the labels remain legible. And, in actual service, they do not remain legible throughout the life of the vehicle.

There are two basic types of certification labels:

- There are *metal labels* with the required information embossed or stamped in them. These labels are typically riveted into position. Attachment A, Photo 3 is an example.
- There are *plastic/paper labels* with the required information printed on them with a type of ink. These labels are typically held in position with an adhesive. Attachment A, Photo 21 is an example.

Metal labels. The material printed on the metal labels used with trucks and tractors normally remains legible. It is protected from wear and fading because it is in the left door jam area as required by 49 CFR 567.4(c).

¹The following quotes from the preamble to this proposal support our belief: 67 Fed. Reg. 12782, 12784 third column "Therefore, from a practical standpoint, almost all vehicles operated by U.S. -based motor carriers have certification labels that meet the requirements of 49 CFR part 567. 67 Fed. Reg. 12782, 12785 second column "This rulemaking imposes no requirements that would generate new costs for motor carriers." & "As indicated above, U.S. based motor carriers would not be subject to any new requirements under this proposal." 67 Fed. Reg. 12782, 12786 first column "No new action is required on the part of those motor carriers that currently operate or plan to operate on U.S. highways FMVSS-compliant vehicles that currently bear the certification label."

However the information on the metal labels placed on trailers and converter dollies does not remain legible for the life of the vehicle.

49 CFR 567.4(d) requires mounting trailers' certification labels outside the vehicles where they are open to the elements. The front, left-side mounting location prescribed exposes trailer and dolly certification labels to trailer washing chemicals, abrasive road dust, rocks and debris, gouging and scraping, and fading. This results in the information on some metal labels beginning to become illegible after the vehicle has seen as little as two years of service. Virtually all of the labels on trailers and dollies that are 12-years old or older have some damage and many are completely indecipherable. (See Photos 1 through 20 in Attachment A.)

Riveted metal labels seldom detach from trucks or tractors. However, the rivets do corrode on trailers, leading to the detachment of the certification label. (See Photos 6, 11, 12, 16, 17, 19, 20 on Attachment A). Those metal labels that are secured with adhesive may also eventually come free. Additionally, some labels and rivets are destroyed by the galvanic action resulting from their being made of a different metal than that to which they are attached.

Plastic/paper labels. Depending on the manufacturer, the plastic/paper labels may not be as robust as those made of metal. While the inks on the paper/plastic labels do not wear off like the paint on those made of metal, some do fade and the protective coating over the paper may also peel away. In about ten years some plastic/paper labels, in their protected location on trucks and tractors, get difficult to read in part because the grease and grime that collects on them somehow dissipates the ink. Repeated washing and moisture retention in the door jam, mechanical harm, heat, cold and other factors cause the labels to peel off as seen in Attachment A, Photos 22-26.

On trailers and dollies, where they are exposed, some plastic/paper labels fade and get peeled or scraped off in as little as a year. Photo 16 in Attachment A shows the effects of scraping on a plastic/paper label. Where something has interfered with their proper adhesion, the paper/plastic labels also peel off of trailers.

Multiple Labels. It is common for more than one manufacturer to place certification labeling on a single vehicle. The certification standards define and make provisions for labeling applied by secondary manufacturers².

² 49 CFR 568 "Vehicles Manufactured In Two Or More Stages" defines Final-stage manufacturers, Incomplete vehicle manufacturers, and Intermediate manufacturers and prescribes labeling requirements for each.

Virtually all trucks are manufactured in two or more stages. A chassis manufacturer, say Volvo, will build a vehicle for use in the oil fields but not install the body. Since some of the FMVSS 108 required lighting must be mounted on the body, Volvo can not fully certify the vehicle. A body installer that completes the vehicle in the second stage of its construction by adding the body is the final-stage manufacturer and is responsible for making the final certification. Moreover, there can be a third or more intermediate stage manufacturers who add equipment like auxiliary axles and winch and derrick systems. This oil-field truck could have three or more certification labels and those added by secondary manufacturers are typically of the plastic/paper types that are prone to peel off.

The proposal is silent on whether vehicles will be required to have all the certification labels required by 49 CFR 567 or, in the case of trucks built in several stages, just that affixed by the chassis manufacturer. Attachment B shows a chassis-cab label and it obviously does not carry all the information ultimately required by FMVSS 567.

If all of the certification labels applied to a vehicle must be retained throughout its life, how is an inspector going to know that the one applied by an intermediate stage manufacturer fell off? This creates a situation requiring enforcement officials to do a paper chase, checking that the certification labels contain reference to each FMVSS applicable on the day that the vehicle was completed. Doing this leaves little time to determine if the equipment is in a fit condition unless it is detained for an unusually long inspection period. As already indicated, we believe that discerning that the lights work is more important than finding a label (or labels) indicating that everything required by FMVSS 108 was present before the first purchase of the vehicle in good faith for purposes other than resale.

Obtaining Replacement Labels. The FMCSA does not address, and the NHTSA has no rules for, obtaining replacement certification labels. The NPRM details how Canadian or Mexican carriers with never-labeled trucks might get them for their vehicles, however, there is no commentary on how domestic carriers are to replace damaged or missing certification labels.

As we have indicated, certification labels fall off and become illegible. Additionally, if certification labels must be retained throughout a vehicle's life certain repairs will also drive the need to obtain replacements. It is not uncommon for cabs or doors or the front left side of trailers or converter dolly frames to be worn, rusted or damaged to the extent that they must be repaired or replaced. While replacement doors and cabs are readily available from the original equipment manufacturers (OEMs) they come without certification labels. Undamaged plastic/paper labels from the replaced

components can not be transferred to the new parts because 49 CFR 567.4(b) requires that "The label shall, unless riveted, be permanently affixed in such a manner that it cannot be removed without destroying or defacing it." While riveted labels can be relocated, it is difficult to remove the rivets without destroying the label. Further, the labels are usually also damaged by whatever caused the need to replace or repair the cabs, doors, trailer sill members or converter dolly frames.

Trailer certification labels are typically the only ones that are now sometimes replaced. This is primarily because they normally contain the Vehicle Identification Number (VIN), which is needed to get registrations and show proof of ownership. While obtaining replacement VIN labels is not a quick, easy process, they may be acquired from either the vehicle's manufacturer or a state vehicle registrar.

To ensure they supply a proper VIN, manufacturers and registrars carefully trace trailer ownership before issuing a new plate and doing so is time consuming. It presently takes a small fleet about six to eight weeks to get a replacement trailer VIN label³. And a replacement VIN may be all that one gets. When states issue a new VIN, no certification information comes along with it. Manufacturers that supply a replacement VIN label may or may not provide certification information with it. Since there is currently no need to retain the certification labels, there is a limited call for replacements and manufacturers have no set procedure for providing them.

Unlike the VIN, which, as noted above, can be obtained from a state vehicle registrar, only the vehicle's manufacturer can provide a certification label. Therefore, it is impossible for motor carriers using equipment made by bankrupt and defunct companies like Marmon, Bering, and Diamond-Reo trucks and tractors and Fruehauf, Dorsey, Budd, Trailmobile, and Boone trailers and converter dollies to acquire a replacement certification label.

Secondary manufacturers add significantly to the motor carrier's inability to obtain replacement certification labels. Literally hundreds of these final-stage manufacturers, incomplete vehicle manufacturers, and intermediate manufacturers either have or are going out of business.

The companies performing intermediate and final-stage manufacturing are normally small; they are often a family owned, single facility enterprise. They typically perform fairly simple operations like installing a body. Should the certification label that they affix to a vehicle vanish, the purchaser of a

³ Based on ATA Engineering staff visits to a small fleet.

used truck would usually not know their identity and therefore would not know where to turn to obtain a replacement label.

Is the U.S. government, in essence, going to confiscate the equipment of operators who own vehicles made by companies that went out of business just because it is missing a label? Unlike the agency contends in its rulemaking analysis relating to Executive Order 12630 (Taking of Private Property), this proposal does have "takings" implications if the FMCSA demands that all equipment have a certification label.⁴

Affixed By Manufacturer. Proposed Part 393.8 (a)(1) requires that the vehicle must have a certification label "affixed by the vehicle manufacturer." We take this to mean that even if motor carriers can obtain replacement certification labels, FMCSA will not allow them to place the labels on their vehicles themselves. While we have no idea exactly how many vehicles are currently in service without manufacturer affixed certification labels, we can say that going to the manufacturer (or perhaps several manufacturers if all labels are required on a vehicle) to have the label(s) affixed will be a significant logistics problem. And, in the final analysis, how is an enforcement official to know who installed the label or even who created it?

Costs. Although there is presently no requirement to keep a certification label, most such trailer labels also contain the VIN which, as we have noted, is needed. After talking with a variety of fleets, we estimate that eventually 10% of all trailers need new VIN labels. Since they are typically combined, we estimate that the number of trailers losing their certification and VIN labels is the same. There were 4.7 million commercial trailers registered in 2000 and their average age was about 9.6 years.⁵ This means trailers are employed for around 20-years and if 10% of them require replacement labels then roughly 23,500 trailers are affected yearly.

ATA, using Department of Transportation (DOT) data, estimates that the weekly revenue per trailer is at least \$1,500. Information gained during an ATA staff visit to a small fleet indicates that it takes 6-8 weeks to obtain a replacement VIN label. Using this information one can calculate a yearly loss-of-revenue cost to the industry of over \$200 million resulting from fleets holding trailers from service until they receive replacement certification labels (trailers can be used while awaiting a replacement VIN). This figure excludes trucks, tractors and dollies, the costs and downtime associated with returning vehicles to the manufacturers to have them affix the replacement

⁴ 67 Fed. Reg. 12782, 12786 first and second columns.

⁵ *Highway Statistics, 2000*. Federal Highway Administration and Martin Labbe Associates.

labels and the costs associated with the yet to be discussed loss of glider kit and repair assembled trailer service parts.

FMCSA requested information on the economic impact of this proposed rule and public comment on its determination that this regulatory action would not have a significant economic impact on a substantial number of domestic small entities.⁶ Given the costs and requirements already discussed, we believe:

- Unlike stated in the Regulatory Flexibility Act commentary, the proposal will subject U.S.-based motor carriers to new requirements (retaining and maintaining certification labels).
- Unlike stated in the Executive Order 12866 and Regulatory Flexibility Act commentaries, this rulemaking will have a significant economic impact on the interstate motor carrier industry most of which is composed of domestic small entities.
- Unlike stated in the Executive Order 13045 commentary, this rule is economically significant under Executive Order 12866 because it does have an impact of more than \$100 million in any one year.

Glider Kits and Repair-Assembled Trailers. A glider kit is defined by the NHTSA as follows⁷:

"When a new cab is used in the assembly of a truck, the truck will be considered newly manufactured for the purposes of paragraph (a) of this section, the application of the requirements of this chapter, and the Act, unless the engine, transmission, and drive axle(s) (as a minimum) of the assembled vehicle are not new, and at least two of these components were taken from the same vehicle."

Likewise, a repair-assembled trailer is defined as:

"When new materials are used in the assembly of a trailer, the trailer will be considered newly manufactured for the purposes of paragraph (a) of this section, the application of the requirements of this chapter, and the Act, unless, at a minimum, the trailer running gear assembly (axle(s), wheels, braking and suspension) is not new, and was taken from an existing trailer-

⁶ 67 Fed. Reg. 12782, 12785 second and third columns.

⁷ 49 CFR 571.7(e) & (f) "Federal Motor Vehicle Safety Standards"

- (1) Whose identity is continued in the reassembled vehicle with respect to the Vehicle Identification Number; and
- (2) That is owned or leased by the user of the reassembled vehicle.'

Both glider and repair assembled trailer kits are sold as repair (or service) parts by their manufacturers. This means fleets purchase these assemblies much like they do a replacement muffler. Motor carriers typically buy such parts to repair a fairly new vehicle that has suffered extensive damage. For example the engine, transmission and drive axles of a new tractor rolled in a crash can continue to be used if reunited in a glider kit. While glider kits come with a new VIN, neither the glider nor the repair-assembled trailer have or require a certification label.

In making the restoration, the vehicle owner (motor carrier) uses the glider or trailer repair assembly kit to fix the massively damaged tractor or trailer. The manufacturer can not provide a meaningful certification label for the repaired vehicle, based on how the original was constructed, because, for example, a Kenworth glider kit may be used to restore a wrecked International truck or tractor. Also, the service kit manufacturer has no knowledge of how well the customer made the repair. Consumers are neither deemed manufacturers by NHTSA (nor, as will be discussed later in this document, the Vehicle Safety Act) nor required to affix certification labels when they repair or modify their own vehicles.⁸ This leaves nobody to create a certification label for the repaired vehicle.

Glider and trailer repair assembly kits provide legitimate and economical means to recycle major portions of badly damaged vehicles. A requirement that all vehicles have a certification label will spell the end to employing these valuable repair practices because no entity is qualified to make such labels for them.

Law Precludes Label Application, Retention. The National Traffic and Motor Vehicle Safety Act of 1966 (the Vehicle Safety Act) is the statute requiring labeling. Interestingly, Section 108 of this Vehicle Safety Act

⁸49 CFR 567.7 A person who alters a vehicle that has previously been certified in accordance with §567.4 or §567.5, other than by the addition, substitution, or removal of readily attachable components such as mirrors or tire and rim assemblies, or minor finishing operations such as painting, or who alters the vehicle in such a manner that its stated weight ratings are no longer valid, before the first purchase of the vehicle in good faith for purposes other than resale, shall allow the original certification label to remain on the vehicle, and shall affix to the vehicle an additional label of the type and in the manner and form described in §567.4.... (Underlining added for emphasis.)

precludes the need for the consumer to either apply or retain the certification label. As presently revised this Section states:⁹

(a) **General.**--Except as provided in this section, sections 30113 and 30114 of this title, and subchapter III of this chapter, a person may not manufacture for sale, sell, offer for sale, introduce or deliver for introduction in interstate commerce, or import into the United States, any motor vehicle or motor vehicle equipment manufactured on or after the date an applicable motor vehicle safety standard prescribed under this chapter takes effect unless the vehicle or equipment complies with the standard and is covered by a certification issued under section 30115 of this title.

(b) **Nonapplication.**--This section does not apply to--

- (1) the sale, offer for sale, or introduction or delivery for introduction in interstate commerce of a motor vehicle or motor vehicle equipment after the first purchase of the vehicle or equipment in good faith other than for resale; ... (underlining added for emphasis)

Since the Vehicle Safety Act does not require certification labels on vehicles introduced into interstate commerce once they are purchased for use, rather than resale, motor carriers need neither apply nor retain them.

What Safety Does A Certification Label On In-Service Vehicles Provide?

Label Provides Dealers and Distributors Compliance Data. As already noted, the Vehicle Safety Act creates the need for a certification label. Section 114 (as most currently revised) requires:¹⁰

A manufacturer or distributor of a motor vehicle or motor vehicle equipment shall certify to the distributor or dealer at delivery that the vehicle or equipment complies with applicable motor vehicle safety standards prescribed under this chapter. A person may not issue the certificate if, in exercising reasonable care, the person has reason to know the certificate is false or misleading in a material respect. Certification of a vehicle must be shown by a label or tag permanently fixed to the vehicle. Certification of equipment may be shown by a label or tag on

⁹ 49 U.S.C. 30112

¹⁰ 49 U.S.C. 30115

the equipment or on the outside of the container in which the equipment is delivered.

The Vehicle Safety Act (revised) also makes the following definitions:¹¹

Dealer "dealer" means a person selling and distributing new motor vehicles or motor vehicle equipment primarily to purchasers that in good faith purchase the vehicles or equipment other than for resale.

Distributor "distributor" means a person primarily selling and distributing motor vehicles or motor vehicle equipment for resale.

Manufacturer "manufacturer" means a person--

- (A) manufacturing or assembling motor vehicles or motor vehicle equipment; or
- (B) importing motor vehicles or motor vehicle equipment for resale.

NHTSA defines the Purpose of 49 CFR 567 as:

- Specifying the content, location and requirements for the certification label, and
- To provide the consumer with information to assist him or her in determining which of the Federal Motor Vehicle Safety Standards are applicable to the vehicle.

Label Does Not Ensure Safety. Its "Purpose" makes it clear that the certification label is not intended to ensure that vehicles are safe. Manufacturers do not declare to NHTSA that the vehicle meets the applicable FMVSS. The certification label is a notification to the distributor or dealer, which can be passed on to the consumer, that the manufacturer(s) met certain FMVSS when the vehicle was built. The Vehicle Safety Act and NHTSA only apply NHTSA's rules to those who work on equipment "before the first purchase of the vehicle in good faith for purposes other than resale."¹² Having this label attached to an in-service vehicle does nothing to verify either its condition or what components are present. Because of this, some manufacturers attach another label stating "Warning Data shown on vehicle identification plate is correct on date of manufacture. Alterations made may affect data shown" (See Attachment A, Photos 1, 15).

¹¹ 49 U.S.C. 30102

¹² 49 U.S.C. 30112 and 49 CFR 567.7

Consumers Need Not Administer Labels. Consumers can perform repairs that invalidate portions of the certification label, without a need to alter it; they do not have to re-certify their vehicles to themselves. This means that an in-service vehicle may not have the same characteristics that it did when the manufacturer applied the certification label. For example tire sizes can be changed to something not reflected on the label and, as long as the motor carrier obeys the provisions of 49 CFR 393.75 and uses tires in good repair without overloading them, no rules are violated. Fleet conversions to low profile tires are an example of this. Tires were changed to sizes not listed on the certification label yet this did not adversely impact vehicle safety.

We have indicated already that we believe the Vehicle Safety Act never envisioned the consumer (the entity that purchases vehicles in good faith other than for resale) being responsible for retaining and, therefore, maintaining the certification label throughout the vehicle's life. If it had, would it not require that either manufacturers or dealers or distributors furnish labeled vehicles to consumers instead of requiring only that manufacturers furnish them to dealers or distributors?

It is likely that those drafting the Vehicle Safety Act realized that a label lacks meaning after the vehicle is acquired by those who purchase it in good faith for purposes other than resale. When in service and exposed to fair wear and tear and the requisite maintenance, vehicles lose the pristine condition that exists at the time they are transferred from the manufacturer to the distributor or dealer. And, as will be discussed later, consumers lack the capability to know if the maintenance that they perform keeps the vehicle in certifiable condition. Once a new vehicle first goes into actual service the label has already served its purpose, as stated by NHTSA, of providing the consumer with information to assist him or her in determining which of the Federal Motor Vehicle Safety Standards are applicable to it.

Canadian Vehicle Certification. Vehicles built for sale in Canada must be certified as complying with the Canadian Motor Vehicle Safety Standards (CMVSS).¹³ As the preamble to this NPRM states, although these vehicles do not have certification labels meeting U.S. requirements, they comply with most, if not all, U.S. safety requirements because of the similarities between the CMVSS and FMVSS.¹⁴ Yet FMCSA proposes to keep these vehicles from use in this country unless they have a label meeting 49 CFR 567.

¹³ 67 Fed. Reg. 12782, 12783 first column. "Manufacturers of vehicles sold for use in Canada must certify compliance with the CMVSSs and the vehicles must bear a Canadian certification label.

¹⁴ 67 Fed. Reg. 12782, 12783 first column.

Apparently the U.S. DOT is so smug that it believes only the United States can write appropriate Motor Vehicle Safety Standards and a label showing new vehicle compliance to these standards means the in-service vehicle is safe. This is simply not true.

The FMCSA contends that safety is served if the vehicle has all the equipment required by the FMVSS and it is in good repair. We certainly agree with that. However, we also believe vehicles can be safe without having each item of equipment that NHTSA requires on or after a certain date. Antilock braking systems (ABS) are a good example of this. Certain vehicles in use today were built before ABS was mandated and, absent this technology, they have still gone millions of miles without accidents. There are also ABS equipped vehicles that have traveled few miles and were involved in a crash. Does ABS assist drivers making panic stops on slippery surfaces: yes. Does a vehicle have to have ABS to be safe: no, but in most cases it must have it to legally be used in this country.

No vehicle can operate in the U.S. in violation of the Federal Motor Carrier Safety Regulations (FMCSR).¹⁵ In the case of ABS, FMCSR 393.55(c) requires that each air braked truck, truck tractor, or trailer (regardless of where they were built or sold or first placed in service) manufactured on or after the date that FMVSS 121 required ABS shall:

be equipped with an antilock brake system that meets the requirements of 49 CFR 571.121, S5.1.6.1 (S5.2.3 for trailers).

We submit that the few Canadian certified vehicles that enter this country, which are not virtually identical to U.S. certified vehicles pose no unique threat to safety. The two prime areas where Canada adopted rules similar to the FMVSS but did so at a later date encompass ABS and automatic brake adjusters. As noted above, the FMCSR already require that on and after the date it was first required on new vehicles sold in this country, ABS must be on all in-service vehicles built from that time forward. The same holds true for automatic brake adjusters.

Mexican Vehicle Certification. Mexican vehicles are built to comply with safety requirements established by the Mexican government.¹⁶ While the Mexican federal safety standards do not resemble the U.S. requirements as closely as the Canadian rules do and do not require certification labels, they do help ensure that new vehicles incorporate needed safety features. In fact it is reasonable to believe that vehicle manufacturers the world over

¹⁵ 67 Fed. Reg. 12782, 12783 second column.

¹⁶ 67 Fed. Reg. 12782, 12783 first and second columns.

build equipment that they trust will prove safe if driven correctly and maintained properly. Indeed the FMCSA states in the preamble to this NPRM that most Mexican commercial vehicles assembled since 1994 were built to meet the FMVSSs.¹⁷

Once again we fail to see any safety benefit from a certification label that may indicate neither what equipment is on an in-service vehicle nor its condition. All vehicles operating in this country, regardless of where they are domiciled or were constructed, must meet the FMCSR. FMCSA stated in the preamble to this notice that:

...FMCSA's safety regulations require that all motor carriers operating in the United States meet the same safety requirements, without exception...

and

The FMCSRs include numerous cross-references to specific FMVSSs that have the effect of requiring all motor carriers to ensure that their vehicles are equipped with most of the safety features/equipment required by the FMVSSs.¹⁸

Existing regulations already require that commercial vehicles operating in this country have appropriate safety equipment and be kept in good operating condition. Therefore, for all in-service vehicles regardless of their origin, inspection officials should and will spend their time determining that the various components perform properly. Safety inspectors should not be charged with conducting a certification label paper chase. If they are given this responsibility it will detract from their ability to truly impact safety.

Another factor relating to both Canada and Mexico is the fact that motor vehicles, particularly trailers, do not always enter the country via the highway. Who is to inspect trailers that enter this country on trains and aboard ship and what will become of such equipment if it is discovered to be without a certification label once in this country? The proposed rule will keep it from being used on the highway and also from being sent back by any other means of interstate commerce. Because of state laws governing the need to show legal ownership and operation, it might even be impossible to have the vehicle scrapped.

Federal Motor Carrier Safety Regulations Must Differ From Federal Motor Vehicle Safety Standards

¹⁷ 67 Fed. Reg. 12782, 12783 second column.

¹⁸ 67 Fed. Reg. 12782, 12783 second and third columns.

The Concern. As the preamble to this NPRM states, the FMCSA has made many of the NHTSA's FMVSS applicable to motor carriers. This is accomplished by referencing the FMVSS in the FMCSR and requiring that equipment be maintained in a manner ensuring continual conformity.¹⁹ However, in many instances motor carriers have no way of knowing if their vehicles comply with the FMVSS.

The Problem. The FMVSS are applicable to manufacturers. These new vehicle standards are written for firms having engineers and laboratories. Motor carriers have neither such expertise nor facilities to use for showing compliance to the FMVSS. Further, even if motor carriers had the technical staff and facilities to prove that certain systems meet the FMVSS, they would destroy their vehicles in the process of doing so. Also, vehicles in service are subject to fair wear and tear and since the FMVSSs are written for new equipment, they do not reflect this.

It is reasonable for FMCSA to have regulations that are companions to the standards from the NHTSA. Motor carriers have no desire to purposefully negate something called for by the FMVSS. It is unreasonable for FMCSA to simply reference the FMVSS in their FMCSR. Regulations for in-service equipment must be written so that both motor carriers and enforcement agencies understand and can use them to check vehicles for compliance. These regulations must also recognize that some acceptable wear and allied degradation is associated with use.

The FMCSA indicated its thinking on this matter in a statement in the Friday, January 9, 1998 Federal Register.²⁰ Here the agency issued final revisions to FMCSR 393.60 "Glazing in specified openings." In doing so it noted that FMVSS 205 requires a certification mark on glass and that carriers can show they are in compliance by looking for and finding this label.

While truck operators can comply with FMCSA's glazing requirements in FMCSR 393.60 because the marking enables them to check for and show conformity to the FMVSS, this is an exception to the general problem. Typically there is no way for carriers to know if their equipment continues to meet the criteria established by the FMVSS following operation, repair, or

¹⁹ 67 Fed. Reg. 12782, 12783 third column: "The FMCSRs include numerous cross-references to specific FMVSSs that have the effect of requiring all motor carriers to ensure that their vehicles are equipped with most of the safety features/equipment required by the FMVSSs." 67 Fed. Reg. 12782, 12784 second column: "Through our cross references to FMVSSs, we require motor carriers to ensure that their CMVs are equipped with specific safety devices and systems that NHTSA requires on newly manufactured vehicles, and that they are maintained to ensure their continued performance."

²⁰ 63 Fed. Reg. 1383, 1386 first column.

servicing because compliance can not be established by labeling alone. ATA is on record with this problem in several dockets and FMCSA has basically disregarded such concerns.

The FMCSA issued another statement in the Monday May 4, 1998 Federal Register²¹ indicating that when the FMCSR adopt the FMVSS consumers need not demonstrate compliance to the rules in the same manner required of manufacturers. The agency revealed that motor carriers need only show a good faith effort to buy and use the correct repair parts. However the law does not require that manufacturers aid consumers in doing this (by mandating such things as performance labels) and these words of explanation in their preamble are not followed up with any relief in the regulations themselves.

The Result. The fact that neither motor carriers nor inspection officials can check in-service vehicles for compliance with many of the FMVSS is another reason that mandating certification label retention accomplishes little more than creating a complex paperwork burden. The information on the label helps establish neither that the in-service vehicle is in a safe condition nor that its components all meet an applicable FMVSS.

THE SOLUTION

The best solution to the problems posed by the proposals in this NPRM is to drop the matter. We see no other resolution to predicaments such as being unable to obtain replacement certification labels from companies that no longer exist. Likewise many second and third owners of trucks have no means to determine who the intermediate stage manufacturers of their vehicles were and, therefore, can not obtain replacement labels for them.

The FMCSA could empower motor carriers to make their own certification labels; however, this would be the ultimate in a regulation that only accomplishes paperwork. A motor carrier having a vehicle lacking a certification label has no way (short of begging traceable manufacturer(s) for help) to determine what FMVSS it complied with upon its final manufacture and law enforcement officials checking on a label's veracity face the same problem. Therefore, an owner generated certification label is meaningless.

Given that meaningless and missing labels are equally valueless, and that even when they are present the original certification labels tell little about an in-service vehicle, we strongly recommend that FMCSA resolve the

²¹ 63 Fed. Reg. 24454, 24460 second and third columns.

myriad problems created by adopting the NPRM's proposals by not implementing them.

Where FMCSA believes it imperative for a vehicle to be configured so it could have met a particular FMVSS in force on the date that it was built, the agency can require this, as it has for ABS and automatic slack adjusters.

CONCLUSION

The Vehicle Safety Act does not foresee a reason for the consumer (motor carriers) to maintain the certification label. If it did it would require the manufacturers to provide certification to the consumer instead of to dealers and distributors. This reasoning is logical because once a vehicle is first purchased in good faith for purposes other than resale, modifications no longer must be reflected in the certification label. The Vehicle Safety Act recognizes that while consumers can repair their vehicles, they do not have the design, engineering and test capabilities that manufacturers need to certify them as in compliance with the FMVSS.

Vehicle certification labels do not survive; they drop off and become illegible. By contradicting the logic found in the Vehicle Safety Act that certification labels are unnecessary on in-service vehicles, the proposal creates significant problems related to replacing and retaining the labels and yet does virtually nothing to improve safety. Because they can no longer be used, the proposal in effect confiscates those vehicles for which the owner can not obtain replacement certification labels. Reasons for owners being unable to acquire the labels include an inability to identify the responsible manufacturer and finding that the manufacturer is no longer in business.

Another adverse factor is FMCSA's requirement that the manufacturer affix the certification label. For those vehicles where the consumer can acquire an appropriate replacement label(s), the proposal effectively destroys the possibility of having it attached by stipulating that only the manufacturer can do so. In all cases the logistics associated with getting a vehicle back to the manufacturer(s) for re-labeling is complex and in many instances it is impossible. For example an unlabeled truck in Hawaii can not be economically shipped back to its state of origin for re-labeling.

Moreover, the use of trailer repair and truck and tractor glider kits for renovating major damage is in danger of being abolished by this proposal. These service parts replace those portions of vehicles containing the certification label and manufacturers can not provide new labels because they are not a party to completing the repair. Loss of the capability to make major repairs using these parts precludes the economical and environmentally

sound practice of recycling of major unharmed components from badly damaged vehicles. A similar situation exists for replacement doors, cabs and trailer components to which the certification label attaches.

The proposal also redirects motor carrier and inspector time away from matters of actual vehicle condition and into performing paper chase related actions involving finding and displaying certification labels. This diversion of safety inspectors' time to inconsequential matters is counterproductive to safety. Likewise carriers of all sizes will need to make an economically significant expenditure of motor carrier capital to meet the new requirements proposed by this NPRM.

Given the problems inherent in retaining the certification label and the fact it conveys virtually nothing about the safety of an in-service vehicle, ATA urges FMCSA to withdraw this proposal and close the docket.

Before the:
**U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY
ADMINISTRATION**

May 7, 2002
WASHINGTON, DC

FMCSA Docket No. 01-10886

Requirement For Motor Carriers To Ensure That Each Commercial Vehicle They Operate In Interstate Commerce Displays A Label Certifying That The Vehicle Complies With All Applicable Federal Motor Vehicle Safety Standards

Federal Register [Vol. 67, No. 53]

Comments by



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I. Introduction

CVSA is North America's leading commercial vehicle safety and enforcement organization. Its mission is to achieve uniformity, compatibility, and reciprocity of commercial vehicle inspections and enforcement activities throughout North America. This is accomplished through effective motor carrier, driver, vehicle, and cargo safety standards, compliance, education, and enforcement.

The Alliance also serves as a forum for bringing together federal, state, provincial, and local officials with truck and motor coach industry interests in a unique discussion and problem-solving interchange.

CVSA was organized in 1980. To briefly highlight some of our accomplishments since then, we have –

- Significantly reduced the commercial vehicle crash rate on North American highways.
- Established uniform and reciprocal safety standards and enforcement practices in all 50 states, the District of Columbia, U.S. and Canadian Territories, Canadian Provinces, and Mexico.
- Developed, and continue to maintain, international truck and bus roadside inspection standards.
- Developed, and continue to maintain, uniform inspection procedures for vehicles transporting spent fuel and high-level radioactive and transuranic waste and uniform cargo tank inspection procedures.
- Developed, and continue to maintain, the North American Standard Out-of-Service Criteria, that are the standards with which commercial vehicles and drivers at roadside are rendered unfit or unqualified to continue operating.
- Created, and continue to maintain, an internationally recognized inspection decal that is awarded to commercial vehicles found during inspection to be defect free of the critical inspection items.

- Implemented the U.S.-based state motor carrier safety assistance program (MCSAP) and ensured the development of a truck and bus safety program in all 50 states and the District of Columbia.
- Provide enforcement and industry with commercial vehicle safety information for promoting compliance, education, enforcement and performance improvement.
- Developed, and continue to maintain, a complete training curriculum and certification program for approximately 10,000 inspection officers and trainers in North America, as well as the standards for maintaining certification.
- Developed and continues to deliver, a roadside inspection familiarization seminar for industry all over the continent.

While the MCSAP, through its grant program to the states, serves as the underpinning of a national commercial vehicle safety program, CVSA is the organization responsible for the uniform practices and procedures supporting this program in the United States and throughout North America.

II. Background

Although CVSA is based on the premise of uniformity, we believe that the requirements in the Notice of Proposed Rulemaking FMCSA Docket No. 01-10886 will not enhance uniformity, but instead promote inconsistency between the U.S., Canada, and Mexico. The enclosed is supplementary commentary provided to FMCSA pursuant to initial comments filed on April 18, 2002. The rulemaking proposal was reviewed by jurisdictional and truck/bus industry representatives at the CVSA Spring Workshop in Rapid City, South Dakota. The enclosed represents the consensus of the Alliance.

The FMCSA proposes that "motor carriers ensure that their Commercial Motor Vehicles (CMVs) have a certification label that meets the requirements of 49 CFR part 567, applied by the vehicle manufacturer or by a registered importer." Part 567 of title 49 of the Code of Federal Regulations requires that "The label shall, unless riveted, be permanently affixed in such a

manner that it cannot be removed without destroying or defacing it.” The National Highway Traffic Safety Administration (NHTSA) stated that the purpose of 49 CFR 567 is to provide the consumer with information to assist in determining what Federal Motor Vehicle Safety Standards (FMVSS) are applicable to the vehicle. This simply enables purchasers to know what FMVSS applied to the vehicle when it was manufactured. CVSA questions the wisdom of expanding the historic use of certification labels (i.e. Buyer protection for new and imported vehicles) to confirm that vehicles meet manufacturing standards at the point of sale. CVSA further questions the basis upon which NHTSA developed an interpretation that would extend the power of the agency beyond setting safety standards for new vehicles at point of sale to trying to regulate vehicles that are already involved in international commerce in all three countries. The certification label was not developed to serve as a tool to ensure that the vehicle is safe post initial sale to a buyer.

Likewise, FMCSA has not provided any data indicating that vehicles’ without certification labels are a safety issue, or that vehicles displaying a label are less likely to be involved in an accident. Given the international implications of this rulemaking, does FMCSA have data that establishes that Canadian and Mexican vehicles that operate into the United States that do not bear FMVSS certification labels have a higher accident or severity rate than vehicles manufactured to FMVSS standards? CVSA believes this question needs to be addressed before the rulemaking is finalized.

Several major issues are not addressed by this proposal. For instance, certification labels are required at the final stage of the manufacturing process. There may be multiple certification labels on a vehicle depending on the manufacturing process. The certification labels rarely stay on for the entire useful life of the vehicles. The certification labels are often lost, stolen, or damaged, and are not easily replaced. Certification labels may also be removed for legitimate reasons such as crash damage or repair.

Ultimately the responsibility for placement of certification labels will lie with the registrant (owner) and not the manufacturer, as outlined in the proposal. This would result in a situation where owners would be required to produce a current certification label for each vehicle. These

certification labels are only available from the manufacturer and some of the original manufacturers have gone out of business. Manufacturers are not required to provide a replacement label, and therefore often require owners to go through a long and tedious process to provide justification for a replacement certification label. Meanwhile, the motor carrier is without the use of the vehicle, and would not be able to sell or trade it for another vehicle.

It is the consensus of CVSA that there are significant problems with this proposed rule. The rule does not appear to resolve safety issues, but instead would have a significant economic effect on cross-border trade. Additionally, it would negatively impact domestic commercial transportation.

III. Effect of the Vehicle Safety Act on U.S. Based Motor Carrier Operations

U.S. based motor carriers use CMVs which are manufactured in the United States and those that are imported. In either case, the vehicles are required to have FMVSS certification labels. The NPRM states that "almost all vehicles operated by U.S. based motor carriers have certification labels that meet the requirement of 49 CFR part 567." Since vehicles operated in the U.S. already must, and do, meet these requirements, implementing further certification label requirements are redundant, and provides no additional safety value to U.S. based motor carriers or to the motoring public in general.

IV. Effect of the Vehicle Safety Act on Canada and Mexico Based Motor Carriers

This NPRM proposes that both Canadian and Mexican motor carriers would have to comply with the FMVSS and put a certification label on vehicles they intend to operate in the U.S. NHTSA did an interpretation in 1975 stating that the requirement for vehicles' imported into the U.S. are applicable to foreign-based vehicles used in the U.S. This is interpreted further in the NPRM that Canadian and Mexican carriers transporting cargo or passengers into the U.S. would be

importation and thus require a certification label. CVSA questions whether NHTSA has the statutory authority to change rules designed for new and imported vehicles to regulate use on U.S. highways after the initial sale. Did Congress intend rules for importation to be used as a means to regulate vehicles that are being used for conveyance of goods and passengers? Operators of Canadian and Mexican vehicles have no intention of selling or importing their equipment operated into the United States. This equipment will not permanently reside in the United States. Rather, the usage is merely for the transportation of goods and passengers. It is likely that Canada will take the position that cross-border trade does not constitute importation of a vehicle, but simply conveyance¹. Canada is likely to oppose this rulemaking on these grounds and has the ability to introduce similar requirements that would require U.S. manufactured vehicles operating into Canada to comply with Canadian Motor Vehicle Safety Standards (CMVSS) certification label requirements in effect creating a burden on U.S. carriers operating into Canada.

V. Safety Concerns About Vehicles Operated by Foreign Motor Carriers

Canada-Based Commercial Motor Vehicles

Provisions of the Canadian Motor Vehicle Safety Standards (CMVSS) are identical to and in some cases more stringent (e.g. daytime running lights and under-ride protection) than requirements in the FMVSS. Manufacturers of CMVs sold for use in Canada must meet the provisions of the CMVSS and the vehicles must have a Canadian certification label. Similarly, the CMVSS applies most, if not all, of the U.S. safety standards to their safety requirements.

Despite these similarities, the NPRM would require Canadian carriers operating in the U.S. to obtain a label certifying that their vehicles meet FMVSS standards. Since U.S. and Canadian standards are so similar, requiring a Canadian vehicle to obtain a FMVSS certification label in addition to their CMVSS certification label is not an appropriate or reasonable expenditure of resources. No evidence exists suggesting Canadian vehicles provide less than desirable safety

¹ Based on the joint meeting of the International, Legal, and Regulatory Affairs Committee and Vehicle Committee Meeting at the CVSA Spring Workshop May 1, 2002 in Rapid City South Dakota

performance due to the differences in manufacturing standards from that of FMVSS. This rule would place a tremendous burden on owners of Canadian manufactured vehicles that do not meet the U.S. certification standard. It would also place burden on U.S. carriers entering Canada if the Canadian government implements similar certification requirements as a response to this rulemaking. In order not to disrupt commerce between our largest trading partner, CVSA believes that a reciprocal agreement between Canada and the U.S. needs to be negotiated to recognize each other's standards. It is likely that Canada will take a firm stand that CMVs entering the U.S. in interstate commerce should not be required to have FMVSS certification labels, and that CMVSS certification labels should be deemed to be equivalent to the U.S. certification requirements. The proposed rulemaking would place a disproportionate cost of compliance on Canadian based motor carriers in relation to U.S. motor carriers². FMCSA needs to consider the potential impact on U.S. carriers if Canada introduces similar requirements to this NPRM.

Mexico-Based Commercial Motor Vehicles

Mexico-based CMVs are built in compliance with the Mexican governments' safety requirements. Mexican safety standards do not require certification labels and do not mirror those of the U.S. as closely as Canadian standards, but their efforts to match U.S. standards, and in some cases surpass them (as with more restrictive drug and alcohol testing), ensures that important safety standards are being met. FMCSA asserts in the NPRM that many of the 130,000 Mexican vehicles built since 1994 comply with the FMVSS. Additionally, existing regulations require CMVs operating in the U.S. to be in safe operating condition and have the necessary safety equipment. No evidence exists suggesting Mexican vehicles provide less than desirable safety performance. Additionally, requiring Mexico-based CMVs to have certification labels adds no additional safety benefit to determining the condition of the vehicle.

As with Canada, this rule would also place a tremendous burden on owners of Mexican manufactured vehicles that do not meet the U.S. certification standard. It would also place burden on U.S. carriers entering Mexico if Mexican government implements similar certification requirements as a response to this rulemaking.

² Joint effort of ILRA and Vehicle Committees in Rapid City, South Dakota

VI. FMCSA's Regulatory Authority

The FMCSA proposes that "motor carriers ensure that their CMVs have a certification label that meets the requirements of 49 CFR part 567, applied by the vehicle manufacturer or by a registered importer". Furthermore, the FMCSA proposes that enforcement of the certification label rule would be done through roadside inspections. States would be able to cite motor carriers failing to display the valid certification label on their CMVs operated in the U.S. As proposed, these citations would then be compiled to identify patterns of non-compliance by specific foreign motor carriers. No mention is made of safety and how citing motor carriers for not having FMVSS certification labels will improve the CMV industry.

The roadside inspector, whether in Canada, Mexico, or the U.S., does not place a safety value to the certification label. The label does not provide evidence that a vehicle is safe, and it is impractical to place a vehicle Out of Service just because it is lacking a certification label. This is not a safety issue and should not be a concern for our roadside inspectors. This requirement would simply add to the burden on the roadside inspector and industry, and provide no additional safety benefits. Moreover, imposition of this requirement only exacerbates the ongoing debate on who is responsible for the maintenance and repair of intermodal equipment operated on the highway.

VII. Conclusion

Certification labels were developed to provide consumers with information to assist in determining what FMVSS were applicable to the vehicle when it was manufactured. FMVSS certification labels tell little about the quality or safety of the CMV. The certification label is not an indicator of the vehicles' ongoing safety, or of the condition of the vehicle and should not be used as such. No data has been shown to prove a correlation exists between vehicle crashes and FMVSS certification labels. Likewise, roadside inspectors place no safety value on the certification label, and enforcement of the NPRM would only add to the burden on roadside inspectors and industry, rather than enhance safety.

The Mexican government has safety regulations that are similar to that of FMVSS. It is the burden of the U.S. to ascertain manufacturing differences, if any exist, between Mexican made and U.S. manufactured vehicles prior to issuance of a rule making. Prior to issuance of a "restraining order" against vehicles manufactured in a certain nation, there should be satisfactory evidence that the vehicles are manufactured to a lesser standard and that will impact safety. Congress mandated that Mexican CMVs must display a current CVSA decal to obtain access to the United States beyond the Commercial Zone. The expected and accepted condition these commercial vehicles must have and maintain to receive a CVSA decal meet the criteria in the Federal Motor Carrier Safety Regulations Title 49, Part 396. Appendix G, and are common to all commercial vehicles regardless of country of manufacture.

In Canada, the manufacturing standards under CMVSS are in some cases more stringent than existing FMVSS requirements. Requiring foreign carriers to have a FMVSS certification label on their CMVs will provide no additional safety benefit, and will not impact the number of crashes that those carriers have. FMCSA provided no data to indicate that vehicles with FMVSS certification labels are safer than carriers with CMVSS certification labels, or which meet the FMVSS standards, but have no label. Requiring foreign motor carriers to have FMVSS certification labels will create a negative fiscal impact for Canadian, Mexican, and U.S. carriers.

Maintenance of vehicle certification labels creates many problems due to the instability of the label itself. The certification labels do not stay on for the life of the vehicle and become illegible. Replacement of these labels will ultimately lie with the owner, creating a long, tedious, and expensive search to get a replacement from the vehicles original manufacture (who may or may not be in business any longer). Once obtained, this replacement label would say nothing of the current condition or safety of the vehicle.

It is the consensus of CVSA that implementation of this NPRM would not resolve any safety issues, but instead would create a significant economic effect on cross-border trade, and domestic commercial transportation.